

## REMARKS/ARGUMENTS

### **I. Status of Claims**

Claims 1-28 are pending of which claims 1, 10, 15, and 20 are independent.

### **II. Rejections under 35 U.S.C. §103 (a)**

#### Claims 1-4, 6-8, and 15-17

Claims 1-4, 6-8, and 15-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Davies et al. (U.S. Pub. No. 2003/0185249 – hereinafter Davies) in view of Williams et al. (U.S. Pub. No. 2002/0087723 – hereinafter Williams). Applicants respectfully traverse this rejection.

Claim 1 recites a switching control method for controlling traffic flow of an Ethernet frame comprising, *inter alia*, buffering the received Ethernet frame in a data buffer *classified by the CoS*, and *generating a PAUSE frame containing a value of the CoS*.

In the Office Action, while implicitly acknowledging that nowhere do Davies and Williams disclose buffering the received Ethernet frame in a data buffer *classified by the CoS*, and *generating a PAUSE frame containing a value of the CoS*, as recited in claim 1, the Examiner nonetheless maintained the rejection, citing a web page from Wikipedia discussing CoS (hereinafter “the Wiki Page”), and arguing, based on the Wiki Page, that both teachings of Davies and Williams are “not only relevant but also in accordance to the CoS as presented in claim 1.”

In response, Applicants respectfully submit that the Examiner’s arguments made based on the Wiki Page are invalid, given that the cited Wiki Page does not even qualify as a proper prior art reference. More specifically, it is unknown when the Wiki Page was published via the Internet. However, the Wiki Page itself states that “[T]his page was last modified on 6 April 2009, at 05:11(UTC)”. Therefore, one cannot assume that the cited content of the Wiki Page was available to the public

before *6 April 2009*, a date which is more than six years past the March 10, 2003 priority date of the present application. Hence, the Wiki Page does not qualify as a valid prior art reference under 35 U.S.C. 102, and therefore cannot be used against the present application. Accordingly, the Examiner's argument, which is made based on the Wiki Page, is invalid.

Further, with respect to the content of the Wiki Page that the Examiner cites as the basis of his argument, the cited content cannot be regarded as applicable to the present application. For the Examiner's convenience, the content cited from the Wiki Page is reproduced as follows:

“Class of Service (CoS) *is* a 3 bit field within a layer two Ethernet frame header when using *IEEE 802.1Q*. It specifies a priority value of between 0 (signifying best-effort) and 7 (signifying priority real-time data) that can be used by Quality of Service disciplines to differentiate traffic.”

In essence, the cited content alleges that CoS is defined in *IEEE 802.1Q*. However, the WikiPage does not specify *which version of IEEE 802.1Q* in which the CoS is allegedly defined. As publicly known, IEEE 802.1Q has evolved since the March 10, 2003 priority date of the present application. Therefore, if the alleged CoS is defined in a version of IEEE 802.1Q published after the March 10, 2003 priority date of the present application (in which case the version of IEEE 802.1Q does not qualify as a valid prior art reference), then the allegedly defined CoS is not applicable to the present application. In other words, if the Examiner intends to prove that a prior art IEEE 802.1Q defines the allegedly CoS, the Examiner must cite applicable content from the original prior art IEEE802.1Q itself, rather than from a post-dated (relative to the priority date of the present application) third-party source. Accordingly, the cited content of the Wiki Page cannot be regarded as applicable to the present application.

Accordingly, the cited Wiki Page does not qualify as a valid prior art reference, and the cited content, in itself, cannot be regarded as applicable to the

present application. Hence, the Examiner's argument, which is based on the cited Wiki Page, that both teachings of Davies and Williams are "not only relevant but also in accordance to the CoS as presented in claim 1", is invalid.

Consequently, the Examiner fails to overcome the Applicants' arguments advanced in the Response filed February 26, 2009, namely, (1) a priority class (to which both teachings of Davies and Williams relate) and a CoS (to which the claimed invention relates) are two different things in the context of classifying Ethernet frames for switching control, and (2) the Examiner errs in assuming, but without any evidentiary support, that a priority class teaches or suggests a CoS in the context of classifying Ethernet frames for switching control.

Accordingly, claim 1 should be allowable over Davis and Williams. The rejection of claim 1 should therefore be withdrawn.

The rejection of claims 2, 3, 4, 6, 7, 8, 16 and 17 should be withdrawn at least by virtue of their dependency from allowable claims 1 and 15, respectively.

Claims 5, 9, 10-14 and 18-28

Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over Davies in view of Williams, as applied to claim 1 above, and further in view of Chen et al. (U.S. Pub. No. 2003/0147347 – hereinafter Chen). Still further, claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over Davies in view of Williams. Still further, claims 10-12 and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Davies in view of Williams and in view of Lin (U.S. Patent No. 6,754,179 – hereinafter Lin) and further in view of Pope et al. (GB Patent No. 2 372 679 – hereinafter Pope). Still further, claim 13 is rejected under 35 U.S.C. §103(a) as being unpatentable over Davies, Williams, Lin and Pope, as applied to claim 10 above, and further in view of Chen. Still further, claims 18 and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Davies and Williams, as applied to claim 15 above, and further in view of Lin. Still further, claims 20-22 and 25-28 are

rejected under 35 U.S.C. §103(a) as being unpatentable over Davies in view of Williams and further in view of Chen. Still further, claims 23 and 24 are rejected under 35 U.S.C. §103(a) as being unpatentable over Davies in view of Williams and Chen, as applied to claim 20 above, and further in view of Lin.

Claims 10 and 20 recite subject related to that of claim 1. Accordingly, for at least the same reasons stated above in connection with claim 1, claims 10 and 20 should also be distinguishable from Davies and Williams. Further, the cited secondary references Pope, Lin and Chen do not cure the above-noted deficiencies of Davies and Williams. Accordingly, claims 10 and 20 should be allowable over Davies, Williams, Pope, Lin and Chen. The rejections of claims 10 and 20 should therefore withdrawn.

The rejections of claims 5, 9, 11-14, 18, 19 and 21-28 should be withdrawn at least by virtue of their dependency from allowable claims 10 and 20 respectively.

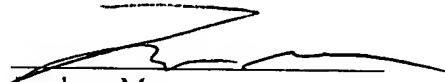
Response filed July 27, 2009  
Responding to office action mailed May 28, 2009  
App. Ser. No. 10/795,983

### **III. Conclusion**

In view of the above, it is believed that this application is in condition for allowance and notice to this effect is respectfully requested. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the telephone number indicated below.

Should any/additional fees be required, the Director is hereby authorized to charge the fees to Deposit Account No. 18-2220.

Respectfully submitted,



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